

HUMAN SERVICES BOARD

In re) Fair Hearing No. 20,841
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Appeal of)

The petitioner seeks a ruling from the Human Services Board that the practice by the Department for Children and Families to include "other physical" as a criterion for substantiation of "physical injury" is improper and a misuse of the registry. The Department moves to dismiss the petitioner's request for fair hearing for lack of jurisdiction claiming that petitioner does not have standing to request relief from the Board.

A telephone status conference was held on May 17, 2007. During the telephone status conference, the petitioner confirmed that he is not listed on the registry. The Department raised the issue whether petitioner has standing to pursue a fair hearing. A briefing schedule was set.

The Department's motion to dismiss for lack of jurisdiction is granted.

REASONS

The Legislature has defined who has standing to bring an action before the Human Services Board; the applicable provisions are found at 3 V.S.A. § 3091(a) which states:

An applicant for or a recipient of assistance, benefits, or social services from the department for children and families, the office of Vermont health access, and the department of disabilities, aging and independent living, the division of mental health of the department of health, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for fair hearing with the human services board. An opportunity will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is *aggrieved by agency policy as it affects his or her situation.* (emphasis added).

The petitioner argues that he has standing because he is aggrieved by the Department's policy allowing the use of "other physical" to substantiate claims of physical abuse in the registry. Petitioner points to 33 V.S.A. § 4916(g) as a basis for bringing a fair hearing. Under 33 V.S.A. § 4916(g), a person may file for a fair hearing if "he or she has reasonable cause to believe that contents of the registry are being misused". Petitioner argues "that knowledgeable citizens shall be heard regarding facts of registry misuse which is the core mission of the Board's external scrutiny function." However, the petitioner misconstrues the Board's

function. The Board was not created to issue advisory opinions but to address the specific concerns of an individual who has personally suffered an injury regarding the application of agency policy to his or her situation. An individual who is on the registry may bring an action if he or she believes the Department has misused the registry regarding his or her situation.

The Board, like all tribunals, is limited to hearing cases in which the petitioner or plaintiff has standing. In Parker v. Town of Milton, 169 Vt. 74 (1998) at page 77, the Vermont Supreme Court stated:

An element of the case or controversy requirement is that plaintiffs must have standing, that is, they must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law.

The Court continues on page 78, that "[t]he injury must be an "invasion of a legally protected interest", Lujan, 504 U.S. at 560, not a generalized harm to the public". See Fair Hearing No. 18,826.

Petitioner is concerned about others who he believes may have been unjustly substantiated for abuse under current Department policy. Petitioner does not have standing to assert rights of a person who may have standing. Fair Hearing No. 18,826.

Petitioner has not been substantiated for abuse and is not on the registry. Petitioner has not suffered a specific injury or harm based on the Department's current practice to include "other physical" within the categories for physical abuse. Accordingly, the Department's motion to dismiss is granted.

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